

Special Civil Application No 930 of 1983

Date of decision : 12th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

ARJANBHAI NARNABHAI vs HARIJANM JATU HIRA

Appearance:

Shri A.J. MEMON, Advocate, for the Petitioner.

Shri R.J.OZA, Advocate, for the Respondent.

Coram : MR.JUSTICE A.N.DIVECHA
12th February 1996

ORAL JUDGEMENT

The order passed by the Debt Settlement Officer (the First Authority for convenience) at Surendranagar on 27th January 1981 under section 14 (2) of the Gujarat Agricultural Debtors Relief Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Appellate Authority in Appeal No.445 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, the First Authority released the respondent herein from his indebtedness to the petitioner and ordred release of one parcel of land bearing survey No.148 (Part) admeasuring 3 acres 37 gunthas situated in village Ranghola in district Surendranagar (the disputed land for convenience) as security for the debt and directed the petitioner herein to hand over its possession back to the respondent.

2. The facts giving rise to this petition move in a narrow compass. It appears that the respondent obtained loans of Rs.4000 on account of his wife's illness and Rs.2000 on account of his son's marriage from the petitioner herein. It appears that he executed a deed of indebtedness in favour of the petitioner herein on a stamp paper of Rs.3.50 ps. It appears that, pursuant to the loan transaction, the disputed land was handed over by the respondent herein to the petitioner presumably as a security. It appears that the respondent herein later on moved the First Authority for his release from the petitioner's indebtedness under the relevant provisions contained in the Act. By his order passed on 27th January 1981, the First Authority passed the necessary order releasing the respondent herein from the petitioner's indebtedness and ordered the petitioner to return possession of the disputed land to the respondent as it was released from security. Its copy is at Annexure-A to this petition. That aggrieved the present petitioner. He carried the matter in appeal before the Appellate Authority under section 13 of the Act. It came to be registered as Appeal Case No.445. By his order passed in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioner has thereupon moved this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. Learned Advocate Shri Memon for the petitioner is technically right that there was no mortgage transaction as it could not have been executed on a stamp paper of Rs.3.50 ps. It however transpires from the material on record that against the loans advanced to the respondent herein, possession of the disputed land was taken away by the petitioner as a security. In that view of the matter, though the transaction may not answer the definition of mortgage contained in the Transfer of Property Act, 1882, it was in the nature of a mortgage transaction and the authorities below are right in considering it as such.

4. It has been urged by learned Advocate Shri Memon for the petitioner that loans were taken by the respondent to defray expenses over his wife's illness and to defray the marriage expenses of his son and such loans cannot be treated as loans for maintenance of the family. I think the authorities below are right in treating these loan transactions to be for the maintenance of the family. It cannot be gainsaid that it would be the duty of the husband to look after his wife's well-being. If any expenses are required to be incurred over her ailment or illness, it would certainly be for maintenance of the family as the wife is also responsible for running the household affairs.

If on account of her ailment or illness she is unable to manage her household affairs, it would certainly affect maintenance of the family.

5. Similarly, the marriage of a child clearly is an important occasion in the family and it has to be properly done in accordance with the family tradition. To maintain family would not only include education to be imparted to the children in the family but also to settle them in their life after they come of age. Marriage of a child coming of age can be said to be a part of settlement of that child in life. That would be a part of maintenance of the family.

6. In view of my aforesaid discussion, I am of the opinion that the authorities below were right in coming to the conclusion that loan transactions were for maintenance of the family and would therefore be covered by the Act. The impugned orders therefore call for no interference by this Court in this petition under Article 27 of the Constitution of India.

7. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

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